FILE COPY

(File No. 36153)

NOV 2 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339.

SOUTHERN PACIFIC COMPANY, *Petitioner,*

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR SOUTHERN PACIFIC COMPANY IN SUPPORT OF THE PETITION.

CHARLES H. BATES,
Counsel for Petitioner,
Mills Building,
Washington, D. C.

November 2, 1931.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
Report of the Opinions Below	2
Jurisdiction	2
Question Presented	2
Statement of Case	3
Amounts Involved	5-9
The Statutes Involved, and the Different Classes of Land-Grant Railroads	10
Argument	20
I. The term "troops," as used in the Railroad Land-Grant Acts, had an established meaning, namely, "soldiers collectively, a body of soldiers," at the time of enactment thereof	20
II. The term "Troops of the United States" can embrace only persons who are soldiers and are in the military service as a business or profession; and cannot embrace persons who are engaged for a period of a few days only, and then merely for training purposes	28
III. Military service, and not merely military connection with the Army, or the Military Establishment, is necessary to constitute "Troops of the United States	29

Page

IV. When the transportation of an individual, or parties of individuals, disconnected from a military expedition, is involved, not only is the status of each individual (whether civil or military) to be considered, but also is the purpose of his transportation ..... 33.

V. If there is any doubt or ambiguity in the language of the Land-Grant Acts with regard to the obligation to transport "troops of the United States" at reduced rates of charge, such doubt should be resolved against any broadening of the term, and its meaning should be limited to the ordinary and usual sense in which it was understood at the time of the enactment of the Statutes in which used.... 35

VI. Military Prisoners and Guards traveling in time of peace and not in connection with a Military Expedition should be considered as traveling for the purposes of the prisoners as individuals. Especially is this true when the cost of all such transportation is paid to the railroads at the reduced land-grant rates only, and charged against the prisoners at full tariff rates, thus commercializing the reduced-rate provision of the land-grant acts.... 44

VII. Members of the OFFICERS' RESERVE CORPS are not "troops of the United States, within the meaning of the land-

Page

grant acts, because they are not soldiers when in active service for the mere purpose of instruction and training, and that for not more than fifteen days 48

VIII. Navy Nurses (female) are not "troops of the United States," because they are not either commissioned or enlisted persons in the Navy establishment, but merely are APPOINTED, and may withdraw at their own volition in time of peace..... 55

IX. Engineer officers of the War Department engaged on NON-MILITARY Duties, such as River and Harbor improvements, and attendance on meetings of the California Debris Commission, are not being transported as "troops of the United States," within the meaning of the land-grant acts, and their transportation should be considered as if they were civilian employees of the War Department 58

X. Escorts accompanying the remains of deceased soldiers, in time of peace, move as individuals, and not as military forces. Therefore, they are not "troops of the United States" under the land-grant acts 62

XI. Enlisted men changing station, or returning to station, on transportation requests bearing indorsement: "Commanding officer notified of amount to be charged against soldier," are presumed to be traveling for their own purposes, and,

Page

therefore, are not "troops of the United States," within the meaning of the land-grant acts 64

XII. An Officer of the Medical Reserve Corps, traveling to and from camps of instruction and training, is not one of the "troops of the United States" within the meaning of the land-grant acts, because he is not a soldier when in active service for the mere purpose of instruction and training.. 66

XIII. No reference is made herein to Finding XIII (R. 72) covering transportation of "STRANDED ENLISTED MEN" because the small amount claimed therein, $46.42, was included in the judgment amount awarded by the Court below.... 67

XIV. Additional "percentage deductions" under joint military arrangement 67

Conclusion 67

CASES CITED.

Alabama Great Southern R. R. Co. Case, 49 C. Cls. 522 ..... 38, 40, 54, 67

Atcherson v. Troy and Boston R. R. Co., 6 Abbott's Pr. N. S. (N. Y.), 329 (1856)..... 36

Same v. Same, 1 Abbott's Ct. of Ap. Dec. (N. Y.) 13 (1856) 36

Balch v. New York and Oswego R. R. Co., 46 N. Y. 521 36

Cleary v. U. S., 35 Ct. Cls. 207, 211..... 29

Page

Cummings v. New York and Oswego Midland R. R. Co., 1 Lansing (N. Y.) 68 (1869) 36
Dunn v. The People, 94 Ill. 120 26
Illinois Central Railroad Co. vs. United States, 273 U. S. 710 48
Illinois Central Railroad Co. Case, 62 C. Cls. 61 ..... 44, 45, 48, 49, 55, 56
Leavenworth etc. R. R. v. United States, 92 U. S. 733, 740 39
Lake Superior & Mississippi Railroad Co. v. United States, 93 U. S. 442 ..... 11, 26, 40, 42
Louisville & Nashville Railroad Co. v. U. S., 258 U. S. 374 37
Louisville & Nashville Case, 55 C. Cls. 45 37
Louisville and Nashville Case, 62 C. Cls. 154.. 48, 55, 58
Oregon-Washington Railroad & Navigation Co. v. U. S., 60 C. Cls. 458 ..... 40, 54
Oregon-Washington Railroad & Navigation Co. v. U. S., 255 U. S. 339 42
Oregon etc. R. R. v. United States, 164 U. S. 539 40
Slidell v. Grandjean, 111 U. S. 437 .....35, 60
Sioux City & St. Paul R. R. v. United States, 139 U. S. 396, 460 40
Stuart v. United States, 18 Wall. 84 30
United States v. Central Pacific Railroad Company, 118 U. S. 235, 240 43
U. S. v. Galveston, Harrisburg & San Antonio Railway Co., 279 U. S. 401 42
Union Pacific Railroad Company v. U. S., 52 C. Cls. 226 .....39, 46, 49
United States v. Union Pacific R. R. Co., 249 U. S. 354 ..... 10, 20, 29, 33, 37, 47, 49, 56, 57, 59, 60, 61, 63, 65, 67, 68

STATUTES.

Page

Act of May 8, 1792, 1 Stat. 271 (Militia Act of 1792) 53
Act of March 30, 1822, 3 Stat. 659 (Land Grant Act) 21, 22
Act of March 2, 1833, 4 Stat. 662 (Land Grant Act) 21
Act of March 2, 1847, 9 Stat. 149 21
Act of March 3, 1845 [Resolution No. 7], 9 Stat. 206 21
Act of March 3, 1849 (9 Stat. 414) 31
Act of Sept. 20, 1850, 9 Stat. 466 (Land Grant Act) 10, 20, 21
Act of Sept. 28, 1850, 9 Stat. 504 (Army Appropriation Act) 21
Act of June 3, 1856, 11 Stat. 21 (Land Grant Act) 60
Act of July 1, 1862, 12 Stat. 48 (Pacific Railroad Act) 18, 43
Act of March 3, 1863, 12 Stat. 772 (Land Grant Act) 17
Act of May 5, 1864, 13 Stat. 64 26
Act of July 2, 1864, 13 Stat. 356 (Pacific Railroad Act) 18, 19, 43
Act of July 3, 1866, 14 Stat. 78 60
Act of July 25, 1866, 14 Stat. 239 (Land Grant Act) 15
Act of July 27, 1866, 14 Stat. 292 (Land Grant Act) 12, 17
Act of May 7, 1878, 20 Stat. 56 (Thurman Act) .. 43
Act of July 14, 1892, 29 Stat. 180 (Army Appropriation Act) 13

Page

Act of March 2, 1901, 31 Stat. 895 (Army Appropriation Act) 14
Act of May 13, 1908, 35 Stat. 146 (Army Nurse Corps) 56, 57
Act of June 3, 1916, 39 Stat. 166 .....41, 50, 51
Act of June 4, 1920, 41 Stat. 776 (U. S. Code, Title 10, Sec. 369, p. 183) 50
Act of Jan. 4, 1920, 41 Stat. 780 .....41, 50, 51, 66
Act of June 5, 1920, 41 Stat. 948, 959 (Army Appropriation Act) 13
Act of July 1, 1922, 42 Stat. 786 (Naval Appropriation Act) 69
Act of Feb. 13, 1925, Sec. 3 (b), 43 Stat. 936, 939 2
Act of May 23, 1928, 45 Stat. 722 (Land Grant Act) 16, 18
Act of Feb. 28, 1929, 45 Stat. 1349 56
Illinois, Act of January 16, 1836 23
New York, General Railroad Act of 1850 36
U. S. Code p. 183, Title 10, Sec. 369 (Act of June 4, 1920, 41 Stat. 776) 50

OTHER CITATIONS.

American State Papers—Public Lands, Vol. III, p. 593 23
Army Regulations, 1913 .....30, 34, 47, 66
Army Regulations, 1857, Sec. 1321 21
1 Atty. Gen. U. S. 457 30
19 Atty. Gen. 572 60
Chief of Record and Pension Office (General F. C. Ainsworth, U. S. A.) 58
1 Comp. Gen. 288 63
Congressional Globe, Vol. 28, p. 879 25

Other Citations—Continued.

Page

Congressional Report No. 1498, 24th Cong. 1st Sess. (H. R. Committee on Public Lands) .. 23

Constitution of U. S., Art. I, Sec. 10 (Militia) ... 26

Lacey's Digest of American Railway Decisions (1875) 36

Military Laws of U. S. (1921) 28, 30

Secretary of War, 1927, Annual Report 1927 52

Secretary of War, 1930, Annual Report 1930 59

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339.

SOUTHERN PACIFIC COMPANY, *Petitioner,*

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR SOUTHERN PACIFIC COMPANY IN SUPPORT OF THE PETITION.

REPORT OF THE OPINION BELOW.

The Opinion of the Court of Claims in this case (R. 72) has not yet been reported, but will probably later appear in 72 C. Cls. . . . . .

JURISDICTION.

The judgment of the Court of Claims was rendered on June 1, 1931. (R. 82.) The petition for writ of certiorari was filed August 31, 1931. (R. 83.) The petitioner invokes the jurisdiction of this Court under Section 3(b) of the Act of February 13, 1925 (Ch. 229, 43 Stat. 936, 939).

QUESTION PRESENTED.

The only question of law involved in this case, both below and here, is whether any or all of the several classes of persons, mentioned in the following statement of the case, are "*troops* of the United States" within a fair, reasonable and just meaning of the reservations and restrictions concerning the transportation of "troops and property of the United States" contained in the several Acts of Congress making grants of lands to certain railroads, and as enforced in the Army Appropriation Acts, and other acts, under which the transportation in question was authorized.

STATEMENT OF CASE.

This case involves the right of the Government to—

(a) "LAND-GRANT DEDUCTIONS" on account of the transportation during the years 1920 to 1923, inclusive, of—

(1) Military **Prisoners and Guards** en route to military prisons, or elsewhere, and **certain other Enlisted Men** erroneously grouped under **Prisoners and Guards.** Costs in numerous instances shown to be charged against Prisoners. Finding VI, (R. 67-69).

(2) Members of the **Officers' Reserve Corps** of the Army traveling in peace time to and from encampments under orders of the Secretary of War. Finding VII, (R. 69).

(3) **Navy Nurses** (Female). Finding VIII, (R. 70).

(4) **Engineer Officers of the War Department** traveling for purposes connected with river and harbor improvement work, or attending meetings of the California Debris Commission—**Non-Military.** Finding IX, (R. 70-71).

(5) **Enlisted men of the Army accompanying the remains of deceased soldiers.** Finding X, (R. 71, 77).

(6) **Enlisted men changing station or returning to station.** Cost shown as to be charged against soldiers. Finding XI, (R. 71-72, 77).

(7) **Officer of the Medical Reserve Corps.** Finding XII, (R. 71-72, 77).

(b) Certain so-called "PERCENTAGE DEDUCTIONS," under the alleged authority of certain Military Arrangements between the railroads and the Quartermaster General of the Army in force at the time of the aforesaid transportation.

The Court below allowed judgment to Plaintiff in the amount of $493.71 in respect of certain classes of transportation claimed by Plaintiff, namely, (a) enlisted men not shown in finding to be either prisoners or guards, but transported on Requests indorsed "Commanding Officer notified of the amount charged against soldier" ($272.05); (b) enlisted men of the Navy, "stragglers," not shown in finding to be either prisoners or guards, transported on Requests which the Court of Claims inferred bore indorsement that amount was to be charged against the soldiers ($50.24); (c) escorts (civilian attendants) accompanying remains of deceased soldiers, and remains of deceased soldier ($60.58); (d) retired officers and enlisted men ($64.42); (e) stranded enlisted men of Navy ($46.42). Exception, of course, is not taken to these judgment items.

AMOUNTS INVOLVED

The details of amounts claimed by Plaintiff in the Court below, and the action of that Court, are shown in the following:

Analysis of Claims and Action thereon by Court of Claims, in its Special Findings of Fact (R.64-72), Conclusion of Law (R.72), and Opinion (R.72-82).

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING VI (R.67-69) (Claim in Exhibit A to Second Amended Petition (R.21-38)).				
1(Sub 1)-PRISONERS and GUARDS--484 persons transported on Requests indorsed: "Commanding Officer notified of the amount charged against soldier." Of these the cost of transportation was:				
(a) Actually not charged back to soldier (general military prisoners) (R.67)	41	$ 286.89	$ 2.86	$ 291.75
(b) Charged back to soldiers (under guard, but not general military prisoners) at commercial fares (422 in number), and collected to following extent:				
(1) Collected in full (R.68).....	235	1,767.38	43.70	1,811.08
(2) Not collected (R.68).....	154	1,126.33	29.59	1,155.92
(3) Collected in part only. ($952.92 charged back to soldiers, but only $645.43 collected). (R.68)	33	396.40	7.19	402.59
	422	3,289.05	80.48	3,369.53
(c) Erroneously charged back to soldier, (on Request 3317436), but subsequently canceled on the ground that the charge was erroneously made.	1	6.80	---	6.80
Totals--1(Sub 1).....	464	$ 3,584.74	$ 83.34	$ 3,668.08
1(Sub 2)-ENLISTED MEN-not shown in Finding to be either Prisoners or Guards, but transported on Requests indorsed: "Commanding Officer notified of the amount charged against soldier," [Judgment was denied to plaintiff by Ct.Cls. for this item, $271.64, on theory that as to these persons, their transportation was to be charged against them because it was not travel for which land-grant deductions could be taken," citing U.P.Case, 266 U.S. 364] (R.68, 81-82).	23	$ 271.64	$ 0.41	$ 272.05
	23	$ 271.64	$ 0.41	$ 272.05

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING VI (R.67-69)--Continued.				
1(Sub 3)-ENLISTED MEN, NOT SHOWN IN FINDING TO BE EITHER PRISONERS OR GUARDS, transported on Requests which did not bear indorsement that amount was to be charged against soldiers. (R. 66, 68).	6	108.27	3.41	111.68
	6	$ 108.27	$ 3.41	$ 111.68
1(Sub 4)-ENLISTED MEN (OF NAVY), "STRAGGLERS," NOT SHOWN IN FINDING TO BE EITHER PRISONERS OR GUARDS, transported on Requests which the Ct.Cls. inferred bore indorsement that amount was to be charged against the soldiers. [Judgment was awarded to Plaintiff by Ct.Cls. for this item $50.24.] (R.69, 88).	8	* 45.36	* 4.88	* 50.24
	8	*$ 45.36	*$ 4.88	*$ 50.24
Totals 1(Subs 1, 2, 3, 4).....	501	4,010.01	92.04	4,102.05
1(Sub 5)-Additional fares and deductions to make up the totals of items shown in Finding VI, Par.2 (R.67).	708	10,933.40	145.80	11,079.20
Totals claimed by Plaintiff per Finding VI, Par 2. (R.67)	1209	14,943.41	237.84	15,181.25

NOTE:
Finding VI, Par.2, shows the following items in Exhibit A to Second Amended Petition:

(R.21-38)	Number of Persons	Land-Grant Deductions	Percentage Deductions	Total
PRISONERS....	196	$ 1,794.46	$ 50.34	$ 1,844.80
GUARDS.....	680	6,135.33	115.32	6,240.65
PRISONERS and GUARDS	333	7,023.62	72.18	7,095.80
	1209	$14,943.41	$ 237.84	$15,181.25

1(Sub 6)-Additional fares and deductions to make up totals of items in Exhibit A to Second Amended Petition (R.21, 38) covered by Finding VI, Par.1.	36	425.27	11.07	436.34
Totals, claimed in Exhibit A to Second Amended Petition (R.21-38) under Finding VI (R.67-69)	1245	$15,368.68	$ 249.51	$15,618.19

NOTE:
The additions per divisions 1(Sub 5) and 1(Sub 6), above, are made necessary to balance the totals with Exhibit A to Second Amended Petition (R.38) which shows all amounts claimed therein as being account of PRISONERS and GUARDS, as follows: Number of Fares, 1245;

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING VI (R.67-69)--Continued				
Land-Grant Deductions, $15,368.68; Percentage Deductions, $249.51; [Total $15,618.19]. Finding VI. Par.1. (R.67). states as to said Exhibit: "Military Prisoners and Guards.--The persons referred to in Exhibit A to the petition(which is made a part of this finding by reference) as prisoners and guards were either (1) general military prisoners and their guards, i.e., enlisted men of the Army, Navy, or Marine Corps, who had been convicted of some offense by general court-martial and were en route, under the guard of other enlisted men of the Army, Navy, or Marine Corps, to military prisons to serve their sentences, said prisoners not having been discharged from the military service; or (2) enlisted men of the Army, Navy, or Marine Corps, who, for some reason other than conviction and sentence by general court-martial, were traveling under like military guard to the destinations named in the departmental requests covering their transportation."				
FINDING VII (R.69) Claimed in Exhibit B to Second Amended Petition (R.39-45))				
2--MEMBERS OF THE OFFICERS' RESERVE CORPS, traveling to and from Encampments under orders of the Secretary of War		1,176.36	16.03	1,192.39
Totals, under Finding VII.....		$ 1,176.36	$ 16.03	$ 1,192.39
FINDING VIII (R.70) (Claimed in Exhibit B to Second Amended Petition) (R.46-51).				
3--NAVY NURSES (Female)				
(a) Ordered home for discharge, which took effect after their arrival home.		132.70	1.59	134.29
(b) Reporting for service under initial orders.		23.33	---	23.33
(c) Being transferred to new stations for duty.		345.99	2.62	348.61
(d) Ordered to accompany another nurse home.		17.05	---	17.05
Totals, under Finding VIII.....		$ 519.07	$ 4.21	$ 523.28
FINDING IX (R.70, 71) (Reference to Exhibit B to Second Amended Petition (R.52-55)).				
4--ENGINEER OFFICERS OF THE WAR DEPARTMENT on Duty in connection with River and Harbor Works and the California Debris Commission--NON-MILITARY. (R. 74-77).	59	456.77	4.36	461.13
Totals, under Finding IX.....	59	$ 456.77	$ 4.36	$ 461.13

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING X (R.71) (Reference to Exhibit B to Second Amended Petition (R.56, 57)).				
5--RECORTS accompanying the Remains of Deceased Soldiers.				
(a) Two (2) fares were for civilian attendants, and one (1) fare for the remains of deceased soldier. [Judgment was awarded Plaintiff by Ct.Cls. for this Item $60.55. (R.77)]	3	$ 53.88	$ 6.70	60.55
(b) Military Escorts.....	17	128.67	8.87	137.54
Totals, under Finding X.....	20	$ 182.55	$ 15.57	$ 198.12
FINDING XI (R. 71) (Reference to Exhibit B to Second Amended Petition (R.58))				
6--ENLISTED MEN Changing Station or Returning to Station, transported on Requests indorsed "Commanding Officer notified of the amount to be charged against soldier." (Finding says: "It has not been ascertained whether any such charges were made or collected." [NOTE: This item, $99.66, was not discussed in the Opinion below.]	6	99.66	---	99.66
Total, under Finding XI.....	6	$ 99.66	---	$ 99.66
FINDING XII (R.71, 72) (Reference to Exhibit B to Second Amended Petition (R.58)).				
7--RETIRED OFFICERS and ENLISTED MEN--				
(a) Transported after date of retirement, and not called to active duty (Requests 2088888, 2088921, and 2088997, and..... Request 2132128)..... [Judgment was awarded Plaintiff by Ct.Cls for these two Items $53.30 and $11.05, [total $64.42] as retired officers and enlisted men citing U.P.Case 249 U.S. 364.] (R. 71, 77).	3 1	$ 48.84 8.61	$ 5.15 2.42	$ 53.99 11.03
	4	56.85	7.57	64.42
(b) Officers Transported after date of retirement, but recalled to active duty. (Requests 2077975, 2087365) (R.71, 77).	2	30.27	0.61	30.88
(Request 2128008) (R.72, 77)..... [These items, aggregating $31.61, were waived by Plaintiff in proceedings below]	1	30.47	0.46	30.93
	3	$ 60.74	$ 1.07	$ 61.81

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING XII (R.71, 72)--Continued				
7--RETIRED OFFICERS and ENLISTED MEN (Continued)				
(c) Medical RESERVE CORPS Officers of Army prior to relief from active duty (Request 3032350) (R.69, 72).	1	19.66	1.50	21.16
Totals, under Finding XII.....	8	$ 137.25	$ 10.14	$ 147.39
FINDING XIII (R.72) (Reference to Exhibit B to Second Amended Petition (R.60)).				
8--STRANDED ENLISTED MEN of Navy (Requests N-01631898 and 1638074)--[Judgment was awarded to Plaintiff by Ct.Cls.for this $46.42, on theory that "Stranded Enlisted Men" are of a status equivalent to men on furlough, citing U.P.Case, 249 U.S.364, 380]. (R.78).	2	* 46.42	---	* 46.42
Totals, under Finding XIII.....	2	*$ 46.42	---	*$ 46.42
Grand Totals.....		$17,966.96	$ 299.82	$18,266.78
The foregoing shows that, of the above totals, Judgment below was awarded Plaintiff for the items marked (*).		*$ 474.15	*$ 19.56	*$ 493.71
It also shows that Plaintiff, in proceedings below, waived claim for items marked (ó).		ó$ 60.74	ó$ 1.07	ó$ 61.81
Totals.....		$ 534.89	$ 20.63	$ 555.52
This leaves balances claimed by Petitioner here.		$17,432.07	$ 279.19	$17,731.26
The foregoing also shows that above totals include claims for deductions made from charges for persons whose transportation was furnished on Requests indorsed: "Commanding Officer notified of amount charged against Soldier," and not included in Judgment amount as follows:				
Finding VI--1(Sub 1)--(R.67).....	464	3,584.74	83.34	3,668.08
Finding XI--(R.71).....	6	99.66	---	99.66
Totals.....	470	3,684.40	83.34	3,767.74
It also shows above totals include claims for deductions made from charges for transportation of members of OFFICERS' RESERVE CORPS, as follows:				
Finding VII--(R.69).....		1,176.36	16.03	1,192.39
Finding XII--7(c)--(R.69, 72).....	1	19.66	1.50	21.16
Totals.....		1,196.02	17.53	1,213.55

The particular reference to these last two sets of totals is because the items thereof overlap in the statement of the Findings as analyzed above.

The amounts claimed by Petitioner cover the period from November 1, 1920, to August 31, 1923, inclusive. Since that time the importance of the question of the right to charges, as claimed by it, has largely increased because of the greater numbers of persons transported in subsequent years, especially of members of the *Reserve Corps* bodies, and *Army Engineer Officers* engaged on *non-military duties*. Furthermore, the so-called "land-grant deductions," complained of, would be a continuing burden for all years to come.

Of course, the "land-grant deductions" and "percentage deductions," as claimed by Petitioner in this proceeding, are only a small part of the *total of deductions annually from all the railroads of the United States.*

THE STATUTES INVOLVED, AND THE DIFFERENT CLASSES OF LAND-GRANT RAILROADS.

There are several classes of land-grant railroads. The earliest railroad land-grant act—and which we shall therefore refer to as illustrating the *first class* of land-grant railroads—that has come to our attention is that of September 20, 1850 (9 Stat. 466), referred to in this Court's opinion March 31, 1919, in case of *United States vs. Union Pacific R. R. Co.* (249 U. S. 354, 357), under which the *Illinois Central Railroad* and the *Mobile and Ohio Railroad* were constructed. The title thereof and the provisions therein with respect to transportation for the United States are as follows:

"CHAP. LXI—*An Act granting the Right of Way, and making a Grant of Land to the*

States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile.

* * * * * * * * *

"SEC. 4. *And be it further enacted,* That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the *said railroad and branches shall be and remain a public highway, for the use of the government of the United States, free from toll or other charge upon the transportation of any* PROPERTY OR TROOPS OF THE UNITED STATES. (Italics ours.)

* * * * * * * * *

"SEC. 6. *And be it further enacted,* That the United States mail shall at all times be transported on the said railroad under the direction of the Post-Office department, at such price as the Congress may by law direct."

Other railroads later were constructed under grants of land carrying like provisions.

Under the decision of this Court in *Lake Superior & Mississippi Railroad Co. v. United States,* 93 U. S. 442 (Oct. Term, 1876), these provisions were construed as giving to the United States *free* use of the roadbed as a highway, only, and thereafter companies operating railroads constructed under such provisions were permitted to charge for the use of the rolling stock and for motive power in the transportation of property and troops of the United States at rates equal to fifty percentum of those charged private parties.

What we shall refer to as the *second class* of land-grant railroads are those constructed under Acts containing provisions like those under which the *At-*

lantic and Pacific Railroad (now the Atchison, Topeka, and Santa Fe Railway Company), from Isleta, N. M., to Mojave, Calif., and the *Southern Pacific Railroad of California*, from Mojave, Calif., to Colorado River, opposite Yuma, Ariz., were aided. The Act referred to was approved July 27, 1866 (14 Stat. 292). The title thereof and the provisions relating to transportation for the United States were as follows:

> "CHAP. CCLXXVIII.—*An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast.*
>
> • • • • • • • •
>
> "SEC. 5. *And be it further enacted,* That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, • • • *Provided, That the said company shall not charge the government higher rates than they do individuals for like transportation and telegraphic service.* (Italics ours.)
>
> • • • • • • • •
>
> "SEC. 11. *And be it further enacted,* That said Atlantic and Pacific Railroad, or any part thereof, *shall be a post route and military road subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government tranportation.* (Italics ours.)
>
> • • • • • • • •
>
> "SEC. 18. *And be it further enacted,* That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this

act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

A noticeable feature of this class of land-grant railroads is that the Company is expressly permitted to charge the United States *full rates* for transportation and telegraphic service, except *only* when Congress may restrict such charges. Restriction has since been imposed, in the Army Appropriation Acts, but *only with respect to transportation of "troops and munitions of war and military supplies and property."* (See Act of July 14, 1892, 29 Stat. 180, and the Army Appropriations Acts from then to the present time.)

In this connection, certain pertinent parts from the Army Appropriation Act for the fiscal year ending June 30, 1921, Approved June 5, 1920, (41 Stat. 948, 959) are here quoted:

"TRANSPORTATION OF THE ARMY AND ITS SUPPLIES.

"For transportation of the Army and its supplies, including transportation of the TROOPS when moving either by land or water, and of their baggage, including the warrant officers of the Mine Planter Service, members of the OFFICERS' RESERVE CORPS, enlisted men of the ENLISTED RESERVE CORPS, and retired

enlisted men when ordered to active duty, including the cost of packing and crating; for transportation of recruits and recruiting parties, of applicants for enlistment between recruiting stations and recruiting depots; for travel allowance to officers and enlisted men on discharge; for payment of travel allowance as provided in section 126 of the Act approved June 3, 1916, to enlisted men of the National Guard on their discharge from the service of the United States, and to members of the National Guard who have been mustered into the service of the United States, and discharged on account of physical disability; for payment of travel pay to officers of the National Guard on their discharge from the service of the United States, as prescribed in the Act approved March 2, 1901; * * * *for the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds* (Italics ours) (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than 50 per centum of full amount of service be paid; * * * *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States and which obtained a grant of public land to aid in the construction of its railroad on conditions that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims

against the United States for *transportation of troops and munitions of war and military supplies and property over such aided railroads,* (Italics ours) shall be paid out of the moneys appropriated by the foregoing provisions only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed 50 per centum of the compensation of such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: *Provided further,* That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts: * * *

What we shall refer to as the *third class* of land-grant railroads is illustrated by the *Southern Pacific Company's line from Roseville Junction, Calif., to East Portland, Ore.* This road was aided under Act of July 25, 1866 (14 Stat. 239). The title thereof and the pertinent provisions relating to Government transportation are as follows:

"CHAP. CCXLII.—*An Act granting Lands in aid in the Construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon.*

* * * * * * *

"SEC. 5. *And be it further enacted,* That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon sail railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that *the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service.* (Italics ours.) And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the *property or troops of the United States*; (Italics ours) and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States."

It will be observed that this is another class of land-grant railroads which were expressly permitted to charge *full rates* for railroad and telegraph service performed for the United States, not to exceed rates paid by private parties, *except* that it was to transport *free* the "property or troops of the United States." This requirement for *free* transportation of *property or troops of the United States* continued for the period of time down to May 23, 1928, on which day the President approved an Act to the effect that it should be a "*50 per cent railroad,*" as follows (45 Stat. 722):

"CHAP. 720.—An Act For the relief of the land-grant railroad operated between the station formerly known as East Portland, in the State of Oregon, and Roseville, in the State of California.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the land-grant railroad heretofore operated, and now being operated between the station formerly known as East Portland, in the State of Oregon, and Roseville, in the State of California, shall hereafter receive compensation for transportation of property and troops of the United States at the same rate as is paid to land-grant railroads organized under the Land Grant Act of March 3, 1863, and the Act of July 27, 1866 (chapter 278): *Provided,* That the Congress hereby reserves the right at any time by law to prescribe such charges as it deems advisable for such Government transportation."

The land-grant act of March 3, 1863 (12 Stat. 772), therein referred to, was in aid of the Atchison, Topeka and Santa Fe Railway Company's line from Lawrence, Kans., to Humboldt, Kans., and was similar in all essential parts, so far as it relates to Government transportation, to the Act of September 20, 1850 (9 Stat. 566), above, under which the Illinois Central Railroad and the Mobile and Ohio Railroad were aided. The Act of July 27, 1866 (14 Stat. 292), referred to, is the one under which the Atchison, Topeka and Santa Fe Railway Company's line from Isleta, N. M., to Mojave, Calif., and the Southern Pacific Railroad of California from Mojave, Calif., to Colorado River, opposite Yuma, Ariz., were aided.

It will, therefore, be seen that, under this Act of May 23, 1928, the Congress directed that the Company operating the said railroad should thereafter be paid 50 per centum of full charges for transportation of *property and troops of the United States,* instead of having to transport same *free.*

This Act is here presented as one of the evidences that *Congress has never sought to increase the burdens of these land-grant provisions, but rather has sought to relieve railroads therefrom.*

There is a *fourth class* of land-grant railroads which may be referred to, namely, those which also received aid in bonds from the United States. This class of roads is illustrated by the *Union Pacific Railroad* and the *Central Pacific Railroad* (the latter now is operated by *Southern Pacific Company*). These roads extend from Omaha, Nebr., to San Francisco Bay, Calif. They were constructed under the Act of July 1, 1862 (12 Stat. 489) as amended by the Act of July 2, 1864 (13 Stat. 356). The title of the Act of July 1, 1862, and its provisions, so far as they relate to transportation for the United States, read as follows:

> "CHAP. CXX.—*An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and Other Purposes.*
>
> * * * * * * *
>
> "SEC. 6. *And be it further enacted,* That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line

Corrected Note on page 19 of Petitioner's Brief on Certiorari in the Supreme Court U. S., *re So. Pa. Co. vs. U. S.*, No. 339, October Term, 1931. (Correction consists of addition shown in **bold type.**):

"(Note: The provision with regard to 'all compensation for services rendered for the government' being applied to payment of the bonds, issued to aid these railroads, was changed by the Act of July 2, 1864, so that only *one-half* of such compensation was retained for such purpose.

"**Later by the Act of May 7, 1878, 20 Stat. 56 (Thurman Act, the remaining one-half of such compensation was to be placed in a Government managed Sinking Fund to be used as a guaranty of final payment of the indebtedness that would become due at maturity of the bonds issued to these companies by the United States. In the 'Sinking Fund Cases,' 99 U. S. 700, it was expressly held that the earnings so placed in the Sinking Fund remained the property of the companies, and that the contracts of all the parties under the Act of July 1, 1862, as amended by the Act of July 2, 1864, remained unimpaired.)**"

in repair and use, and *shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government* (italics ours), whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (*at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service*); (italics ours), and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid: * * *"

(Note: The provision with regard to "all compensation for services rendered for the government" being applied to payment of the bonds, issued to aid these railroads, was changed by the Act of July 2, 1864, so that only *one-half* of such compensation was retained for such purpose.)

These so-called "Pacific Railroads" were not required to suffer any deduction from the amounts of their charges, and it will be observed that they, like the prior two *classes* of land-grant roads described herein, were expressly permitted to charge *full rates* for transportation for the United States the same as private parties.

Other Acts of Congress, which may relate to particular classes of transportation involved in this case, will be quoted, or referred to, under separate headings that may follow.

ARGUMENT.

I.

The term "troops," as used in the Railroad Land-Grant Acts, had an established meaning, namely, "soldiers collectively, a body of soldiers," at the time of enactment thereof.

The expression "troops of the United States" was undoubtedly used in the land-grant acts in its usual and ordinary sense, as signifying "soldiers collectively—a body of soldiers." It might be sufficient in this connection, to cite only this Court's holding in the case of *United States vs. Union Pacific Railroad Co.*, 249 U. S. 354, where it was stated,

> "In 1850 the word 'troops' had (and it has ever since had) an established meaning:—namely, 'soldiers collectively,—a body of soldiers.'"

This conclusion was reached in the following statement in said decision (pp. 356-358):

> "In defining the transportation rights secured to the United States, these land-grant acts draw a broad distinction between freight and passengers. All 'property' of the Government, whatever its character and intended use, is to be carried 'free of toll or other charge'; but of the many persons in its service, only 'troops'. The history of the legislation shows that both the broad term, 'any property', and the narrower one, 'troops', was adopted deliberately. The earliest land-grant act in which the provision appears is that of September 20, 1850, c. 61, sec. 4, 9 Stat. 466, 467, under which the Illinois Central was constructed. The bill as introduced provided for the free transportation of 'troops

and munitions of war'. It was amended so as to read 'any property or troops'. There had been an earlier act granting land to the State of Illinois for the construction of a canal (Act of March 30, 1822, c. 14, 3 Stat. 659) which was amended (Act of March 2, 1833, c. 87, 4 Stat. 662) so as to permit, on the same terms, the use and disposition of the land for railroads. That act provided for the free transportation of 'any property of the United States, or persons in their service.'

"*In 1850 the word 'troops' had (and it has ever since had) an established meaning:—namely, 'soldiers collectively,—a body of soldiers.'* (Italics ours.) Thus the Army Appropriation Act of that year (Act of September 28, 1850, c. 78, sec. 1, 9 Stat. 504, 506) provides for the 'transportation of the army, including the baggage of the troops when moving either by land or water' and for 'mileage, or the allowance made to officers for the transportation of themselves and baggage when travelling on duty without troops.' The contemporary legislation draws a clear distinction also between troops, that is, *those then having the status of soldiers* (Italics ours), and those who once had been in, or were seeking to enter, the military service. Thus the Army Appropriation Act of March 2, 1847, c. 35, 9 Stat. 149, 151 (which provides in substantially the same terms as that of 1850 for the transportation of troops) makes specific provision for 'forwarding destitute soldiers to their homes', for the 'comfort of discharged soldiers', and for 'expenses of recruiting', which include the cost of transportation. See Army Regulations, 1857, sec. 1321. And the Resolution of March 3, 1847, [No. 7], 9 Stat. 206, authorizes the refund of moneys expended by the States and individuals 'in organizing, subsisting,

and transporting volunteers previous to their being mustered and received into the service of the United States for the present war, and for subsisting troops in the service of the United States.' In view of the established meaning of the term 'troops' as used by Congress the duty of the court is merely to apply the provisions of the act to the several classes of persons described above."

The title of the Act of March 30, 1822 (C. 14, 3 Stat. 659) referred to in the above quotation, and the pertinent provision thereof, read as follows:

"CHAP. XIV.—*An Act to authorize the state of Illinois to open a canal through the public lands, to connect the Illinois river with Lake Michigan.*

* * * * * * *

"* * * *Provided also, and it is hereby further enacted and declared,* That the said canal, when completed, shall be, and for ever *remain, a public highway for the use of the government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service,* [Italics ours.] passing through the same."

This appears to be the first land-grant legislation in aid of transportation in the United States, and by its terms would have permitted free use of the highway for *all persons* in the service of the United States. But such a broad requirement never appeared in any subsequent legislation. The broadest term thereafter used was "troops." And so it was continued through all the years, without any attempt to enlarge the term, or to define it in any manner other

than that they should be "troops of the United States."

It might be well here to state some of the incidents going to make up the *history of the times* so as to show that what was contemplated was that only *bodies of soldiers in actual defense of the nation and its frontiers* were considered as *troops* back in the days of this legislation, as indeed also in the present days.

Thus, in "American State Papers—Public Lands" (Vol. VIII, P. 593) will be found an early discussion of the proposed grant of lands to the Illinois Central Railroad Company, from which we quote the following:

"24th Congress. No. 1498. 1st Session.

"IN FAVOR OF A GRANT OF LAND TO AID IN THE CONSTRUCTION OF THE ILLINOIS CENTRAL RAILROAD.

"Communicated to the House of Representatives, March 31, 1836. Mr. Casey, from the Committee on the Public Lands, to whom was referred the memorial of the Illinois Central Railroad Company, reported:

"That by an act of the legislature of the State of Illinois, approved on the 16th January, 1836, a company was incorporated, and authorized, and empowered, to locate, construct, and finally complete a railroad, commencing at or near the mouth of the Ohio river, in the State of Illinois, thence north to a point on the Illinois river, at or near the termination of the proposed Illinois and Michigan canal, with the right to extend the same to the town of Galena in the said State.

* * * * * * * *

"When the Mississippi and Ohio are fast bound up in ice, *troops and munitions of war can*

be transferred with a rapidity and despatch unknown to water transportation, to the frontiers of Illinois, Wisconsin, and Northern Missouri, whence they can be *stretched along the lines of these frontiers in an incalculably short period of time.*

* * * * * * * *

"Considered then as a facility of carrying out a system about undergoing the action of Congress, for the transportation of the United States mail, it should be regarded in a most favorable light. It is also in contemplation, (and recent experience proves that it is only necessary to conceive a work of internal improvement, to carry it into effect,) to extend the road from the mouth of the Ohio to Nashville, in the State of Tennessee, to meet the projected road from that city to New Orleans, and to unite with branches of the great Charleston project, and the contemplated Baltimore and Ohio, and Richmond railroads.

"The completion of these great works would identity the interests of the whole valley of the Mississippi, and bring the west and the south into the most intimate communion. Viewing this subject in every possible point of light, as creating at its southern termination, a commercial emporium of great future consequence to the commerce of the western States, at which will concentrate the trade from the sources of the Mississippi and Missouri, the mineral regions of the north and southern Missouri, the manufactures of the Ohio and tributaries, the rich products of the southern country, brought in exchange for the superabundant productions of the rich soils of Illinois; *or as giving value to millions of acres of the public domain, which are now wholly worthless and unsaleable;* or as enhancing the revenues of the State, and contributing to its welfare and prosperity, in the increase of its population, wealth, and intelligence; and in direct

and positive benefits to the people, or as *creating great facilities in the conveyance of the mail, the* TRANSPORTATION OF TROOPS AND MUNITIONS OF WAR *from one extreme of the country to another, at all seasons of the year, in one fourth of the time, and at one-half the expense now required,* or its effects upon the social and political relations of a large portion of the American people, or their public, or their private interests; it operates upon each and all in the most beneficial manner."

Then, on April 10, 1854, Senator Guin, of California, speaking in the United States Senate upon the proposed Pacific Railroad, among other things said, —capitalization ours—(Cong. Globe, Vol. 28, p. 879):

"As a *military road,* it should engage our attention as a means of protection to our citizens between the Mississippi and the Pacific.

* * * * * * * * *

"The contemplated railway would enable the Government to wield its military power with extraordinary rapidity and economy, and keep in check the dangerous and warlike tribes that roam along the foot of the Rocky Mountains; would reduce the public expenditures for the transportation of TROOPS and military supplies * * *"

Referring to the purposes for which the Constitution was framed, as stated in its preamble, Senator Guin further said (*id.*):

"The measure before us is one emphatically required at your hands by those significant terms. By accomplishing it, foreign fleets and armies will in vain assail us upon the Pacific or Atlantic. From ocean to ocean this new means of communication will carry our TROOPS and munitions of

> war, and enable us, by rapidity of overland communications to use the *military power with such celerity as to defy successful invasion from any quarter.* The Commander-in-Chief at Washington could issue his orders and *move his armies* with as much dispatch, from this to the other side of the Continent, as did the great Emperor in the field of his extensive operations during the wars of the First French Revolution * * * In case of war how are you without it to defend California and New Orleans? Where is your Navy by which to accomplish such a purpose? Where are your transports, or how would they reach their destination? How would you carry TROOPS, munitions or supplies over the mountains, and desert that separates the Pacific from the Mississippi?"

In *Dunn v. The People,* 94 Ill. 120, the Supreme Court of Illinois, referring to the word "troops" as used in the provision of the Federal Constitution (Art. I, sec. 10) that "No State shall, without the consent of Congress, * * * keep troops or ships of war in time of peace", said:

> "The word 'troops' conveys to the mind the idea of an armed body of soldiers whose sole occupation is war or service, answering to the regular army."

All the Standard Dictionaries define the term "troops" in substantially the same way: *i. e.,* as a body of soldiers.

In *Lake Superior & Mississippi Railroad Co. v. United States,* 93 U. S. 442, this Court, in holding that the provision in the Act of May 5, 1864 (13 Stat. 64), that "the said railroad shall be, and remain, a public highway for the use of the Government of the United

States, free from all toll or other charge for the transportation of any property or troops of the United States," did not entitle the Government to the *free transportation* of its troops and property by the railroad company, but only gave it the *free use of the railroad's highway as a means of transportation,* said (p. 454):

> "* * * It might have been very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable."

We are here concerned likewise only with a matter of statutory construction, and while it might have been desirable, from the Government's standpoint, for Congress, in all the land-grant Acts, to have reserved the right to transport anything or anybody it might see fit over the public highway so created, free or at reduced rates of charge, for the use of the same, as a matter of fact it only reserved the privilege of free or reduced rates of charge for the transportation of its "property or troops", and the *usus loquendi* with respect to the word "troops", does not permit of its extension beyond the meaning of the term at the time it was used.

We are not here concerned with the transportation of any body of soldiers—an army, or a detachment thereof,—but only, for the most part, with the transportation of *certain individuals.* Of the total of *1556* persons transported according to the Plaintiff's petition in the Court below (R. 21-61), the largest party moved was 29 in number. In all there were *770* separate Transportation Requests; therefore, the average number of persons transported on each

Request was only *two (2)*. None of the total of 1556 persons had anything to do with any *military expedition.*

It seems plain, therefore, there was no movement whatever of "soldiers collectively—a body of soldiers," within the interpretation by this Court of the term "troops."

II.

The term "Troops of the United States" can embrace only persons who are soldiers, and are in the military service as a business or profession; and cannot embrace persons who are engaged for a period of a few days only, and then merely for training purposes.

It seems impossible to conceive, when one reads the Statutes under which the land-grants were made to the railroads, that either the legislators or the builders of those roads could have had any other idea in mind than that the persons to be transported thereon as "troops of the United States" would be *actually engaged in the pursuit of arms as a business or profession and at least for the chief portion of their working time.*

Within the meaning of the word "troops," there is, in fact, no room for classification of persons who do not give their entire, or, at least, the chief part of, their working time to the business of a *soldier.* Troops, or soldiers, may fairly well be defined as *military forces,* and as to these we quote the following from "Military Laws of the United States" (1921), P. 1095:

> MILITARY FORCES.—The invariable policy of the Government has been to consider the military forces as falling into *two classes*: Those who were soldiers or sailors by profession, irrespective of the national exigency, who took war when it came, and, if they survived it, continued to make military occupation the business of their lives; *second*, those who left their ordinary avocations at the outbreak of or during the continuance of hostilities and enlisted with the expectation of serving only so long as the exigency continued. *Cleary v. U. S.*, 35 Ct. Cls. 207, 211.

It will be seen from this that there is no place in the military field, covered by "troops," for any classification whatever of persons who may not engage in the business of soldiers except for only fifteen/three hundred and sixty-fifths (15/365ths) part of any one year.

III.

MILITARY SERVICE, and not merely military connection with the Army, or the Military Establishment, is necessary to constitute "Troops of the United States."

A mere *military connection* with the Army of the United States or the Militia Establishment, no matter how close the connection may be, does not constitute a person one of the "troops of the United States." Thus it was said by this Court in the *Union Pacific Case* (249 U. S. 354, 359), with regard to *applicants for enlistment in the Army:*

> The fact that under the Army Regulations he receives the same rations as an enlisted man, and

> that he is subject to the same medical attention, [Army Regulations, 1913, secs. 1224, 1225, 1232, 1473, 1476.] does not effect a change of status. And the fact that the transportation is for the purposes of the Government in connection with its military establishment is immaterial. Workmen in armor plants and civilian clerks in the War Department at Washington travel for purposes of the Government, but are obviously not "troops of the United States" within the meaning of the land-grant legislation. The Army Appropriation Acts make specific provisions for the transportation of "troops" and of "recruits."

In the last mentioned connection see Army Appropriations Act approved June 5, 1920 (41 Stat. 948, 959), (quoted, *supra*, p. 13).

Surely no person can be more intimately *connected with* the Army than is the Secretary of War, the head of the War Department, and through whom the President, the Commander-in-Chief, speaks to the highest and lowest in the Army service, and yet it is a fact that *the Secretary of War is not even any part of the Army.* This was held by Attorney General Wirt back in 1821 (1 Op. Atty. Gen. U. S., 457; cited in Military Laws of the U. S. (1921), p. 322).

This Court, in *Stuart vs. United States* (18 Wall. 84), held that (quoting from the syllabus):

> "A contractor with the government to transport from port to port, remote from any seat of war, stores and supplies not forming any portion of the stores or supplies of an advancing or retreating army, is not a person 'in the military service of the United States' within the second section of the act of March 3d, 1849, 'to provide for the payment of horses and other property lost' in that service."

In that case the Court had under consideration a contract of one Stuart with the United States providing that he should transport *military stores and supplies* from Forts Riley and Leavenworth, etc., to New Mexico or Colorado at stipulated prices; that he should be furnished with a suitable escort for the protection of the supplies within certain quantities, and should provide his own escort with regard to greater quantities. While executing his contract he alleged that in the month of *July, 1864,* he had been attacked by a "band of hostile Indians" and that fifty-six head of oxen, his own property, were captured, and no part thereof recovered. Stuart claimed indemnity under the Act of March 3, 1849 (9 Stat. 414), entitled, "An act to provide for the payment of horses and other property lost or destroyed *in the military service* of the United States."

The Court denied Stuart's claim, and one of the reasons for doing so was that the captured oxen were *not* "in the *military service* of the United States" because the *contractor* for the transportation of the military supplies was not "in the military service," and that he was in no sense a *soldier.* The Court's opinion in that case throws considerable light on what constitutes a *soldier* and *military service.* At pages 88, 89, it said:

> "A contractor or carrier is in no sense a soldier. In no just sense is he engaged in war, although he may transport the articles used in war. He carries forth and he carries back supplies and stores for those who are engaged in war, but takes no personal part in it. He carries, in the present case, during the period between April and September, of the year 1864, from the points to

the points named. There is no allegation that in the month of July, when the capture took place, actual war was going on in Kansas, or in the region between Kansas and New Mexico, or Colorado, or that the train from which the capture was made was a part of a *military expedition. The stores, supplies, baggage trains, the 'impedimenta' of an army, are undoubtedly a portion of the army, and those engaged in the management and control of them are in the military service.* (Italics ours.) These are indeed vital to its existence, and their collection and protection are among the most anxious duties of a careful commander. *But the collection and transportation from post to post of stores and supplies, remote from the seat of actual war, not forming a portion of an advancing or retreating army, is quite another thing. These latter duties are those of a commissary or quartermaster, and not of a commanding officer. They may be performed by soldiers or by civilians, by the army or by contractors. Those engaged in them may or may not form a portion of an army.* (*Italics ours.*)

"That the statute of 1849, under which this claim is made, was intended for the indemnity of those engaged in the actual military service of the United States, that is, for enlisted men while in the performance of their duties as such, is plain enough.

"This second section, under which the present claim is made, provides in its first clause for an indemnity for the loss of any horse, mule, ox, wagon, etc., arising from capture or destruction by an enemy, or where the property has been abandoned or destroyed by the order of a commanding officer, while such property was in the military service of the United States, either by impressment or by contract. *This military service is the same as that spoken of in the first sec-*

tion, to wit, in battle, or service as soldiers (Italics ours) under the command of officers of the army. The destruction, abandonment, or capture is that of the same enemy, to wit, an organized hostile force. And the same rule is applicable whether the property was in such actual service by the consent and agreement of the owner, as by hire, or whether it had been forcibly seized by the government, that is to say, 'either by impressment or contract,' unless the owner had agreed himself to bear the hazard of the loss."

Here was a case where, during a period of *actual war,* a person, in so intimate a relation to the Army of the United States as to be required to carry *military supplies* between points not in the immediate area of war, was held not to be so connected with the *soldiery* of the nation as to be considered in the "military service."

IV.

When the transportation of an individual, or parties of individuals, disconnected from a military expedition, is involved, not only is the status of each individual (whether civil or military) to be considered, but also is the purpose of his transportation.

In the *Union Pacific Case* (249 U. S. 354)—so frequently referred to herein because it was so comprehensive of the principles governing in the present case—the purpose of transportation of persons connected with the Army, as individuals, or as groups of individuals, was stated with relation to the several classes of persons therein considered and held *not*

to be "troops of the United States" within the meaning of the Land-Grant Acts, namely, *Discharged Soldiers; Discharged Military Prisoners; Rejected Applicants for Enlistment; Accepted Applicants for Enlistment; Retired Soldiers en route to their homes after retirement; and Furloughed Soldiers, that is, enlisted men of the Army on furlough en route back to their proper stations.* This Court said (pp. 356 and 360):

> "None of these persons travelled as part of a moving army, troop, or body of soldiers. That is, they travelled separately as individuals, and (with few exceptions) each on a different day and to widely scattered destinations. Under recent Acts of Congress and Army Regulations, the transportation of persons of some of these classes is paid for by the Government.
>
> * * * * * * * * *
>
> "*Fourth. The furloughed soldier is, of course, a part of the Army or troops of the United States;* (italics ours) but his transportation back to the proper station, is not "transportation of troops" within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this, only if the soldier lacks funds to bear the expense himself. The advance must be repaid. Army Regulations, 1913, sec. 110."

It is made clear therein that even though a person transported is actually a *soldier*, and one of the "troops of the United States," yet he may *not* be *one of the "troops of the United States," within the meaning of the Land-Grant Acts.*

V.

If there is any doubt or ambiguity in the language of the Land-Grant Acts with regard to the obligation to transport "troops of the United States" at reduced rates of charge, such doubt should be resolved against any broadening of the term, and its meaning should be limited to the ordinary and usual sense in which it was understood at the time of the enactment of the Statutes in which used.

Unfortunately some persons called upon to apply the Land-Grant Acts to transportation for the United States are prone to become confused in the rules of interpretation applicable. They have heard of the rule of construction referred to by this court in *Slidell v. Grandejean*, 111 U. S. 437:

> "It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State. As a reason for this rule it is often said that such acts are usually drawn by interested parties, and they are presumed to claim all they are entitled to."

The principle thus stated by the Supreme Court is applicable, in terms, only to "a grant of public property to an individual, or the relinquishment of a public interest." It has no application to a provision in a railroad land-grant Act by which *a privilege is ex-*

acted of the grantee railroad for the benefit of the United States. Certainly, such a *privilege* is not to be enlarged by doubtful construction, especially where, as here, such enlargement would place an enormous and ever increasing burden upon the grantee.

Also it should be noted that rules of interpretation are to be invoked *only where there is doubt or ambiguity.* We respectfully submit there is no doubt or ambiguity when one looks at the situation broadly and reads the decisions of this Court and the opinions of other Courts with the attention merited by the questions involved.

Thus, the Courts of New York had under consideration in many cases (cited in Lacey's Digest of Decisions, (1875) p. 146) the words "laborer" and "labor" as used in the general railroad Act of 1850 passed by the Legislature of the State of New York, which gave a claim *against railroad companies* for the indebtedness of their *contractors* in certain cases, and to a limited amount, and the Courts held that the words "laborer" and "labor" were used in their *ordinary and usual sense. Balch v. New York and Oswego R. R. Co.,* 46 N. Y. 521, (1871). And thereafter, in *Atcherson v. Troy and Boston R. R. Co.,* 6 Abbott's Pr., N. S. (N. Y.), 329, (1856); *Same v. Same,* 1 Abbott's Ct. of Ap. Dec. (N. Y.), 13, (1856), it was held that, under said statute, a laborer employing his own teams and an assistant, under an agreement therefor with the contractors, could not recover against the Company for the services of the team or the assistant. And in *Cummings v. New York and Oswego Midland R. R. Co.,* 1 Lansing (N. Y.), 68 (1869), it was held, that to charge a railroad company under said Statute, the indebted-

ness must arise from *services personally performed by the laborers.*

There seems quite a parallel in those cases with the case here presented, as what we ask is simply that the term "troops" be interpreted according to its ordinary and usual meaning.

But the decisions of this Court, and of the Court of Claims, fully establish the fact that no mystical meaning is to be attributed to broaden the meaning of the term "troops of the United States." Besides the *Union Pacific Case,* 249 U. S. 354, we have the following:

In *Louisville and Nashville Railroad Co. v. U. S.,* 258 U. S. 374, this Court reversed the Court of Claims (55 C. Cls. 45—Case No. 147, decided April 10, 1922), wherein the majority of that Court held that the term "troops" included the *Coast Guard.* This Court stated, (P. 375):

> "The Coast Guard was established by Act of January 28, 1915, c. 20, 38 Stat. 800, in lieu of the then existing Revenue-Cutter Service and Life-Saving Service, and was composed of those organizations. The Revenue-Cutter Service had been considered a civil service, 15 Op. Atty. Gen. 396; 16 Op. Atty. Gen. 288; 8 Comp. Dec. 852; 15 Comp. Dec. 807. But to its primary function of an armed police force some characteristics of a military force had always been attached; and from time to time Congress had conferred upon it additional incidents of the military service. See 28 Op. Atty. Gen. 543, 547; 30 Op. Atty. Gen. 75. When the Coast Guard was established it was constituted "a part of the military forces of the United States"; and section 1 provides that it "shall operate under the Treasury Department

in time of peace and operate as part of the Navy, in time of war or when the President shall so direct. When subject to the Secretary of the Navy in time of war the expense of the Coast Guard shall be paid by the Navy Department." Congress further manifested its intentions to class the Coast Guard with the Army, Navy and Marine Corps by the provisions in the Acts of August 29, 1916, c. 417, 39 Stat. 556, 600, 601, and c. 418, sec. 1, 39 Stat. 610, 649.

"The military force of the United States is, and always has been a unit, although divided for purposes of administration into several branches; and there is nothing in the land-grant acts to indicate an intention on the part of Congress to differentiate between the several branches in respect to transportation charges. We are of opinion that the term "troops" is not confined to land forces, and that it includes men and officers in every branch. Since those in the Navy and Marine Corps are to be deemed troops within the meaning of those acts, members of the Coast Guard should also be deemed such when serving as part of the Navy. But at other times members of the Coast Guard are not troops."

[NOTE: The part of this decision holding that the officers and enlisted men of the Navy and Marine Corps are to be deemed "troops" within the meaning of the land-grant acts is not questioned by us, when they are, in fact, a part of the "military forces" of the United States. As to the Navy and Marine Corps we consider that the same principles of decision should apply as for officers and enlisted men of the Army. But, of course, this question is not at all involved in this case.]

In *Alabama Great Southern Railroad Co. v. The United States,* 49 C. Cls. 522, (Case No. 31872, decided May 18, 1914), the Court had under consideration whether or not the term "troops of the United States" would include the Organized Militia when being transported to and from joint camps of in-

struction of the Regular Army and the Organized Militia, and, in an opinion by Chief Justice Campbell, it was held that, notwithstanding the transportation was requested and paid for by the United States such organizations did not come within any definition of "'troops' as that word is used in the Constitution." The Court said:

> "The word 'troops' conveys to the mind the idea of an armed body of soldiers whose *sole occupation is war or service,* [*italics ours*] answering to the Regular Army. The organization of the active militia of the State bears no likeness to such a body of men." Citing *Dunne v. People,* 94 Ill., 138.

The United States did not appeal from that decision.

In *Union Pacific Railroad Company vs. U. S.,* 52 C. Cls. 226 (No. 33056, decided February 19, 1917), which is the case that was affirmed by this Court in 249 U. S. 354, the Court of Claims, by Judge Barney, stated:

> "As a condition to the granting of land to the plaintiff in this case it was provided 'such railroad shall be and remain a public highway for the use of the Government of the United States free from toll or other charges upon the transportation of any property or troops of the United States.' It becomes necessary, then, in the decision of this and similar cases to decide what classes of individuals and what individuals are embraced within the terms 'troops of the United States.' It is contended for the defendants that the law is well settled that the land-grant statute is to be construed against the railroads, and this is doubtless true as to the extent and limit of such grants. *Leavenworth, etc., R. R. v. United States,* 92 U. S., 733, 740; *Sioux City & St. Paul*

R. R. v. United States, 139 U. S., 396, 460; *Oregon, etc., R. R. v. United States,* 164 U. S., 539. But we know of no such rule made applicable to the conditions or consideration of such grants for the reason that the reason for the rule in the latter case does not exist. It was said by Justice Harlan in the opinion of the court in the Oregon, etc., R. R. case, *supra,* at page 539: 'The rule of construction applicable to the granting act is the familiar rule that all grants of this description must be construed favorably to the Government, and that nothing passes but what is conveyed in clear and explicit language.' (Citing cases.) 'And that the construction should be such as will effectuate the legislative intention, avoiding, if possible, an unjust or absurb conclusion, is also well settled.'

"We see no reason for the application of any such rule to this case, for the further reason that the only question before us for decision is the meaning and construction to be given to the simple phrase 'troops of the United States.' As was said in *Lake Superior, etc., R. R. v. United States, supra,* 'It might be very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *uses loquendi* is a far more valuable aid than the inquiry what might be desirable' (pp. 454, 455).

"If we go to the dictionary for the meaning of the word 'troops' we find that it is defined in a military sense as 'a body of soldiers; a muster of soldiers; an army.' *Standard Dict.*"

The Court then cited and quoted approvingly from its decision in the *Alabama Great Southern R. R. Co. Case,* 49 C. Cls. 522, referred to above.

In *Oregon-Washington Railroad & Navigation Co. v. U. S.,* 60 C. Cls. 458, (Case No. D-12, decided April

6, 1925), the Court of Claims had under consideration the status of the *National Guard* organizations while traveling to and from camps of instruction provided by the United States for the training of the National Guard organizations of the States in the Service of the United States. This was in consequence of the National Defense Act of June 3, 1916, 39 Stat. 166, as amended by the Act of June 4, 1920, 41 Stat. 780, which provided for organization of the National Guard of the United States. The Government had urged that members of such organizations were "troops of the United States" within the meaning of the reservation in the railroad land-grant acts, thus endeavoring to broaden the meaning of the term "troops of the United States." The Court held, however:

> "When the National Guard participates in encampments and maneuvers provided for them under the provisions of the national defense act they are not in the service of the United States; they are not called forth for any of the purposes specified in the Constitution; and not being so called forth, they are not troops in the service of the United States."

It had been argued by the Government in that case that what was theretofore known as the Organized Militia had become a *Federalized organization* and therefore had become "troops of the United States" within the meaning of the railroad land-grant acts, but the Court did not agree to this view.

In none of the cases cited above did this Court, or the Court of Claims, permit the term "troops of the United States" to be broadened, but, instead, gave to that term its usual and ordinary application. This was done, also, notwithstanding the urgings of Gov-

ernment accounting officers in various decisions that the term should be construed to include practically every person who might be transported by the War Department, Navy Department, and the Marine Corps at their expense or at the expense of the persons transported, when the initial cost was upon the Government.

That the reservations in the land-grant acts should not be extended beyond their actual requirements also are evidenced by decisions of this Court and of the Court of Claims, relating to the interpretation of the term "*property* of the United States," but we do not believe it necessary to cite such decisions in the present case, other than to say they are referred to in our Petition for Writ of Certiorari (R. 1-11), said decisions being in the following cases:

Case of *U. S. v. Galveston, Harrisburg & San Antonio Railway Co.*, 279 U. S. 401, in which this Court held that the Government was *not* entitled to land-grant deductions from charges for transportation of Army officers' *private mounts, even though used in the military service,* as "*property* of the United States." (R. 3)

Case of *Oregon-Washington Railroad & Navigation Co. vs. U. S.*, 255 U. S. 339, which held that Army officers' *personal effects* transported at Government expense on change of station were not "property of the United States." (R. 8)

It would indeed be very surprising if either the term "*troops* of the United States" or the term "*property* of the United States" were for one instant to be broadened in view of the holding of this Court in *Lake Superior and Mississippi R. R. Co. vs. U. S.*, 93 U. S. 442, where it was stated (p. 454):

> "It might be very convenient for the government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable."

As stated also in our Petition for Writ of Certiorari, the term "troops of the United States," back at the time when the legislative grants were made to the railroads, was *primarily* and *historically* understood to mean those *soldiers* necessary to the protection of our frontier country and those persons employed in the construction of the railroads, particularly against hostile Indians. (R. 4)

Reference also is made in our Petition for Writ of Certiorari (R. 9) to the decision of this court in *United States vs. Central Pacific Railroad Company,* 118 U. S. 235, 240, with regard to the provisions of the Act of May 7, 1878, ch. 96, 20 Stat. 56 (Thurman Act) in which it was held that the term 'whole amount of compensation' for transportation for the United States on the bond-aided Central Pacific Railroad, thereby required to be withheld to apply against the indebtedness of that Company, *could not be interpreted to change the provisions* of the prior Act of July 1, 1862, *supra,* p. 18, and as amended by the Act of July 2, 1864, which Act as so amended required that only *one-half* of such compensation should be withheld account of the indebtedness of the Company, **so as to apply to earnings of those parts of roads owned or operated by the bond-aided companies but which were not aided by Government bonds.** The Court therein stated that the construction which had been placed by the ~~decision of the Court of Claims in that case~~ **Government, in the Court below, 21 C. Cls. 180,** would *not only render the provisions for reduced rate transportation,* **in the land-grant acts,** a *"breach of faith on the part of the United States, but*

an invasion of the constitutional rights" of the Company.

In not a single case, that we have examined, has this Court extended, or permitted to be extended, the term "troops of the United States" to other classes than those to whom your petitioner has applied them in its dealings with the United States Government. And your petitioner now only asks that in those cases where *reduced rates* are not required of it by law, or by the agreements of the railroads, the other provisions of the Land-Grant Acts expressly entitling the railroads to *"fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service,"* shall be observed by the United States Government.

VI.

MILITARY PRISONERS AND GUARDS traveling in time of peace and not in connection with a MILITARY EXPEDITION should be considered as traveling for the purposes of the prisoners as individuals. Especially is this true when the cost of all such transportation is paid to the railroads at the reduced land-grant rates only, and charged against the prisoners at full tariff rates, thus commercializing the reduced-rate provision of the land-grant acts.

(Reference to Finding VI) (R. 67-69).

In the *Illinois Central Case,* 62 C. Cls. 61, the Court of Claims held that the transportation of *military prisoners and their guards,* en route to a military

prison, was to be regarded as the transportation of "troops of the United States" within the meaning of the railroad Land-Grant Acts, and that case was followed in this case.

In the *Illinois Central case* the facts showed (as they show in this case) that the *prisoners and guards* transported were enlisted men of the United States Army. It further was found, in this case, that, as to *464 such persons* transported, the Transportation Requests were endorsed *"Commanding officer notified of the amount to be charged against soldier."* (Finding V) (R. 67)

was further found in this case that:

> "The *commercial* fares for the transportation of these soldiers and their guards [422 persons] were actually charged by the Government against said soldiers." (Finding VI), (R. 68)

And notwithstanding these Findings the lower court refused to give judgment to Plaintiff.

In the *Illinois Central Case* the Court of Claims held that it was immaterial that such military prisoners and guards were not traveling as part of a moving army, troop, or body of soldiers. We respectfully submit, however, that in order to bring a soldier within the term "troops of the United States," as used in the railroad land-grant Acts, it is not only necessary that he should be an officer or enlisted man of the Regular *Army, Navy or Marine Corps,* but that the railroad transportation involved, certainly in time of peace, must be in connection with the *movement of such troops.* The transportation of a military prisoner from his military station to a military prison

in a distant State, is not properly to be regarded as a *movement of troops of the United States*, that is, of its *soldiers*, within the meaning of the railroad land-grant Acts, but is merely for the purpose of *discipline*, a purpose not in contemplation when the land-grant Acts were passed, and not in any manner covered by their language or intent.

Military prisoners are those officers and men who have been sent to prison for the purpose of undergoing punishment for violations of law or the Army Regulations, to be followed in many instances by their dishonorable discharge from the service. Their transportation to the places designated for their imprisonment has therefore no connection with the *movement of the troops* to which they belong. The fact that in a number of the instances here involved the War Department Transportation Requests bore the endorsement *"Commanding officer notified of the amount to be charged against soldier"* is a recognition on the part of the War Department of the fact that *the transportation involved was not required by any movement of troops, but was individual and personal in character and should be borne by the person.*

The transportation of military prisoners to the places designated for their confinement is akin to the transportation back to his proper station of a furloughed soldier, which was held by the Court of Claims in the *Union Pacific Case*, 52 C. Cls. 226, not to be transportation of the "troops of the United States" within the meaning of the railroad land-grant Acts. In that case the court said (p. 236):

> "* * * By treating the soldiers' travel while on furlough as an individual matter for his own com-

fort and convenience, the Government has recognized that he was not traveling as a soldier or as a part of the 'troops of the United States.'"

Besides as said by this Court (249 U. S. 354), in affirming the decision below in the case just cited (p. 360):

> "*Fourth.* The furloughed soldier is, of course, a part of the Army or troops of the United States; but his transportation back to the proper station, is not 'transportation of troops' within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this only if the soldier lacks funds to bear the expense himself. The advance must be repaid. Army Regulations, 1913, sec. 110."

It is immaterial whether the cost of the transportation of any of these prisoners and guards was *actually* charged against the soldier, or *actually* collected from them. We refer to the matter merely because the endorsement of such a purpose on the transportation requests shows that the War Department regarded such transportation as *individual and personal* and not related to any military movement, which relation to a military movement, we submit, is necessary in order to make the separate transportation of individual soldiers transportation of "troops of the United States" within the meaning of the railroad land-grant Acts.

For the Government to refuse to pay the railroads full tariff rates as to these Military Prisoners and Guards, certainly raises a grave question, especially

when full tariff rates are collected from the prisoners, and only land-grant rates are paid to the railroads. Whether such shrewdness is to be accomplished, is for this Court to say.

VII.

Members of the OFFICERS' RESERVE CORPS are not "troops of the United States," within the meaning of the land-grant acts, because they are not soldiers when in active service FOR THE MERE PURPOSE OF INSTRUCTION AND TRAINING, and that for not more than fifteen days.

(Reference to Finding VII) (R. 69)

In the *Illinois Central Case,* 62 C. Cls. 61, the Court of Claims held that members of the OFFICERS' RESERVE CORPS, traveling to and from camps of instruction and training under orders of the War Department, were "troops of the United States" within the meaning of that term as used in the railroad land-grant Acts, and followed that conclusion in the *Louisville and Nashville Case,* 62 C. Cls. 154, and has followed it also in the present case. An application for a writ of certiorari was denied by this Court October 18, 1926, in the *Illinois Central Case* (273 U. S. 710). The petition in the present case was filed August 4, 1924.

Your Petitioner is not satisfied with the correctness of the *Illinois Central* decision below, and believes that grave errors have occurred therein that should be corrected by this Court. The fact that this Court denied an application for a writ of certiorari in the *Illinois Central Case* does not, of course,

amount to an affirmance of the judgment therein.

In the *Illinois Central Case* the Court of Claims rested its conclusion on the sole ground that members of the Officers Reserve Corps are a *part of the Military Establishment,* and while in camp for instruction and training they cannot be classed either as *Militia Officers,* or as *National Guard Officers,* or brought within any other classification, and, *therefore,* that Court reasoned, they *must be* "troops of the United States."

The reasoning in that case is so contrary to the principles laid down in other cases, cited herein, that we cannot believe it should be allowed to become a finality. For instance, this Court has held that land-grant deductions are not to be required in respect of *Furloughed Soldiers* and *Stragglers,* yet they, too, are certainly *part of the Military Establishment.* If the decision below be allowed to stand the railroads may look for further untold encroachments from meticulous accounting officers upon the railroad earnings in other respects not now under consideration, and which have been halted only by the past decisions of this Court.

It is respectfully submitted that, in deciding the *Illinois Central Case,* the Court of Claims failed to give due consideration to the fact that, as stated by Mr. Justice Brandeis in delivering the opinion of this Court in the case of the *Union Pacific Railroad Co.,* 249 U. S. 354, 357 (affirming 52 C. Cls. 226):

> "In 1850 the word 'troops' had (and it has ever since had) an established meaning;—namely, 'soldiers collectively,—a body of soldiers.'"

and that the term "soldier," at the time of the passage of the land-grant Acts, meant (and still means) a person whose sole occupation is that of arms, such as an officer or enlisted man of the Regular Army of the United States.

In holding that the term "troops of the United States" as used in the railroad land-grant Acts includes members of the Officers' Reserve Corps, the Court of Claims extended said term, by judicial construction, to a class of persons that did not exist at the time the railroad land-grant Acts were passed and could not have been within their intendment. While it is true that the National Defense Act of June 3, 1916 (39 Stat. 186), as amended by the Act of June 4, 1920 (41 Stat. 759), provides that the Army of the United States, in its broadest sense, shall be held to include the Officers' Reserve Corps, it is submitted that the Officers' Reserve Corps is after all merely an organization of *citizens* engaged primarily in civic occupations—such as doctors, lawyers, bankers and business men—whose only "active service" (so-called) is limited to not exceeding *fifteen days* in any one year,—"except in time of a national emergency expressly declared by Congress," (U. S. Code, p. 183, Title 10, Sec. 369),—during which brief period the Reserve Officers may be ordered to encampments for the purpose of *instruction and training* only, and not for any other purpose whatever. *It was not intended that while there they would be SOLDIERS, but only that they there would LEARN TO BECOME SOLDIERS. Potentiality* only was expected. It is going far beyond the purpose of a fair construction of the term "troops of the United States," as used in the railroad land-grant Acts, to hold that said term

includes, in time of peace, the reserve force of citizens termed the Officers' Reserve Corps. Like the reorganized National Guard of the United States and of the States, members of the Officers' Reserve Corps, in time of peace, are merely *potential* "troops of the United States." The only difference is that, as the Officers' Reserve Corps, the Federal Government is independent in every respect of any State control of its members, while under the National Guard the Federal Government under the Constitution had only a limited control.

The term "Reserve" in itself precludes the possibility of believing that the persons are *actual soldiers,* for the mind immediately grasps the real meaning to be that the members of the Reserve Corps are *held back* for *future use* as *soldiers.* In fact, this is declared in Section 37 of the Act of June 3, 1916, as amended by Section 32 of the Act of June 4, 1920 (National Defense Act), which states:

> "For the purpose of providing *a reserve of officers available for military service when needed* (italics ours) there shall be organized an Officers' Reserve Corps consisting of general officers, of sections corresponding to the various branches of the Regular Army, and of such additional sections as the President may direct. The grades in each section and the number in each grade shall be as the President may prescribe * * *"

Then also with regard to pay and allowances, Section 37a, of the Act of June 3, 1916, as amended by Section 32 of the Act of June 4, 1920, provides that Reserve Officers shall not be entitled to pay and allowances except when on active duty; and with regard to active duty, said Acts provide that,

"Except in time of a national emergency expressly declared by Congress, no reserve officer shall be employed on active duty for more than fifteen days in any calendar year without his own consent."

It appears from the Annual Report of the Secretary of War, 1927 (pp. 173-174), that there were 110,014 members of the Officers' Reserve Corps on June 30, 1927, 8,451 of whom (said report states) were also members of the "federally recognized National Guard." The same report further states (p. 55) that since the date of its reorganization under the provisions of the National Defense Act as revised in 1920, the Reserve Officers' Training Corps has produced approximately 29,500 graduates, the great majority of whom were eligible for eventual commission in the Officers' Reserve Corps. Said report also states (p. 175) that of the officers appointed during the year ending June 30, 1927, 5,018 were Reserve Officers' Training Corps graduates of the school year 1926-27, and 23 were graduates of the "blue course" at the citizens' military training camps held during the summer of 1926, the remainder being variously selected from among enlisted men of the Regular Army, National Guard, and Reserve Corps, National Guard officers, and civilians. The Reserve Officers' Training Corps consists of students at various schools and colleges who have been enrolled in that Corps for military training, under authority of the National Defense Acts, and said Annual Report of the Secretary of War (p. 55) states that at the close of the school year 1926-27 the total enrollment in the Reserve Officers' Training Corps was 108,957, and

(p. 56) that during the summer of 1926 citizens' military training camps were successfully operated in the nine corps areas, including one camp in Porto Rico, with a total enrollment of 34,194.

We call attention to these facts and figures with reference to the Officers' Reserve Corps, the Reserve Officers' Training Corps, and the citizens' military training camps from which sources the Officers' Reserve Corps is largely recruited, for the purpose of showing not only the present large numerical strength of the Officers' Reserve Corps but the even greater proportions which the said corps will probably assume. *It is manifest that in time the Officers' Reserve Corps may include a very large part of the entire citizenship of the country.* To hold that these citizen reserves are "troops of the United States" within the meaning of the railroad land-grant Acts as that term was understood at the time of the passage of those Acts and is still understood, *is to throw a very serious economic burden upon the land-grant railroads and those equalizing therewith, and would enlarge the plain meaning and purpose of the words of those Acts.*

The fact is that the Reserve Corps, both officers and enlisted men, the Naval Reserve Force, and the National Guard, together constitute practically what was embraced in the original Act of May 8, 1792 (1 Stat. 271), known as the Militia Act of 1792, which provided:

> "* * * That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall

severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this act." * * *—(Section 1).

It has been held by the Court of Claims that the members of the militia are not "troops of the United States" within the meaning of the land-grant laws (*Ala. Great Southern R. R. Co. v. U. S.*, 49 C. Cls. 522), and it has been likewise held as to the National Guard (*O. W. R. R. & N. Co.*, 60 C. Cls. 458). These decisions are based on the fact that the persons transported did not constitute any part of the *soldiery* of the United States, in time of peace. The fact now remains to be recognized that members of the Reserve Corps, both officers and enlisted men, are also purely a part of the *citizenry* of the United States, and *not* in its *military service*, that is, are not the *soldiery* of the United States so as to constitute them "troops of the United States" within the meaning of the land-grant acts, nor at all, in time of peace.

We also wish to call attention to the fact that the railroad land-grant laws have never been amended, or attempted to be amended, by Congress so as to extend the land-grant transportation privilege to any persons other than "troops of the United States" as that term was understood and used at the time of the passage of those Acts, even if it be assumed that it is within the power of Congress to extend such privilege.

On the other hand, Congress has in instances given relief from the restrictions as to charges for transportation for the United States first placed upon

aided railroads. For instances, Union Pacific Railroad and the Central Pacific Railroad (*supra*, p. 43) and the Southern Pacific Company's line from Roseville, Calif., to East Portland, Ore. (*supra*, p. 17). *Thus Congress has shown there is no intention on its part that the Land-Grant Acts shall be unduly harsh or burdensome.*

It seems to us that these aspects of the matter should be called to the attention of this Court, as it is believed they were not presented to it in the Petition for Writ of Certiorari in the *Illinois Central Case.* For these reasons we respectfully urge a consideration by this Court of the question as to the status of this *reserve military force of citizens* under the Railroad Land-Grant Acts.

In this connection, the Court's attention is invited to what is stated later on in this brief with respect to the status of *Engineer Officers of the War Department traveling for non-military purposes.*

VIII.

NAVY NURSES (female) are not "troops of the United States," because they are not either commissioned or enlisted persons in the Navy establishment, but merely are APPOINTED, and may withdraw at their own volition in time of peace.

(Reference to Finding VIII) (R. 70)

In the *Louisville and Nashville Case,* 62 C. Cls. 154, 157, the Court of Claims, speaking by Judge Hay, who also delivered the opinion in the *Illinois Central Case, supra*), said:

> "The Naval Nurse Corps is a part of the regular Naval Establishment, and its members when being transported for the purposes of the Government must be classified as troops of the United States,"

referring, in this connection, to the Act of May 13, 1908, 35 Stat. 146, establishing the Nurse Corps of the Navy.

The same conclusion was reached by the Court of Claims in its prior decision in the *Illinois Central Railroad Co. Case*, 62 C. Cls. 61, 66, [No. D-348. Decided April 5, 1926.] In the present case the Court below referred to said opinions and stated that it adhered to the views there expressed.

It is manifest that the mere fact that the Naval Nurse Corps is a part of the regular Naval Establishment is not of itself sufficient to make members of the Naval Nurse Corps "troops of the United States" in any proper sense.

In the *Union Pacific Case*, 249 U. S. 354, this Court, in dealing with the case of *applicants for enlistment* in the Army, recognized the fact that no one could be held to be one of the "troops of the United States" unless actually enlisted in the *military service* of the United States, the court saying, in its opinion, that "it is the actual enlistment, the oath of allegiance, that changes the status from a civilian to soldier." The Supreme Court further said, (p. 359) in the same connection:

> "The fact that under the Army Regulations he receives the same rations as an enlisted man, and that he is subject to the same medical attention, does not effect a change of status. And the fact that the transportation is for the purposes of the

> Government in connection with its military establishment is immaterial."

The Act of May 13, 1908, 35 Stat. 146, establishing "The Nurse Corps (female) of the United States Navy," provides that it shall consist of one superintendent, to be *appointed* by the Secretary of the Navy, "whose term of office may be terminated at his discretion, and of as many chief nurses, nurses, and reserve nurses as may be needed: *Provided*, That all nurses in the Nurse Corps shall be *appointed* or removed by the Surgeon General with the approval of the Secretary of the Navy," etc.

Members of the Navy Nurse Corps (female) may withdraw from their employment *at their own volition*, in time of peace.

Navy nurses (female) are merely *employed, not enlisted*, in the Navy. It is inconceivable that a person in such a status can be properly said to be one of the "troops of the United States." Navy nurses (female) are manifestly no more "troops of the United States" than are *civilian clerks* in the Navy Department who travel for purposes of the Government and at Government expense.

As stated by this Court in the *Union Pacific Case, supra*, at p. 359:

> "Workmen in armor plants and civilian clerks in the War Department at Washington, travel for purposes of the Government, but are obviously not 'troops of the United States' within the meaning of the land-grant legislation."

It may be said, in part, of Navy nurses (female) as was said of militiamen, in War Department circular of June 18, 1903 (at page 23), publishing certain

communications from the Chief of the Record and Pension Office [General F. C. Ainsworth, U. S. A.] and the Attorney General (italics ours):

> "The Department holds that there can not be a constructive muster-in of civilians or of State militiamen who are *temporarily employed in a military capacity by the United States, and who may even be armed, clothed, transported, and subsisted by the United States* for brief periods, but who are so employed with the distinct understanding that they are not United States troops, but are merely armed civilians or State troops acting for the time being as auxiliaries to the forces of the United States, and *subject to withdrawal at any time at their own discretion* or upon the order of the governor of the State to which they belong."

In view of the foregoing the holding as to Navy Nurses (female) in the *Louisville & Nashville Case* appears clearly erroneous.

IX.

Engineer officers of the War Department engaged on NON-MILITARY DUTIES, such as River and Harbor improvements, and attendance on meetings of the California Debris Commission, are not being transported as "troops of the United States," within the meaning of the land-grant acts, and their transportation should be considered as if they were civilian employees of the War Department.

(Reference to Finding IX, R. 70-71.)

The Engineer Officers of the War Department, referred to in Finding IX of the Court below, were

all officers of the Engineer Corps of the United States Army, the cost of whose transportation was paid from appropriations of the War Department covering river and harbor works and the California Debris Commission, and they were *traveling for the purposes connected with river and harbor improvement work or to attend meetings of said Commission.*

As stated in our Petition for Writ of Certiorari (R. 8) in this case, the transportation for the purposes mentioned, is entirely in connection with *duties merely civil in their nature.* Such duties are expressly recognized in the Army Appropriation Acts, and in official Army reports, as "NON-MILITARY activities of the War Department," as distinct from Military Activities. See Army Appropriation Act for fiscal year ending June 30, 1930, 45 Stat. 1349. The *Non-Military Activities* of the War Department—Corps of Engineers—covering the California Debris Commission and River and Harbor works are specifically listed on Pages 1374, 1379-1380. Annual Report of Secretary of War 1930, p. 9.

It is clear, therefore, that the transportation of these Engineer Officers of the War Department had no connection with the movement of "troops of the United States," since the duties to which they were assigned were of a *non-military* character and their transportation was *not* for a military purpose.

In the *Union Pacific Case,* 249 U. S. 354, this Court recognized that it was not enough that the person transported be an officer or enlisted man in the Army, to make his transportation that of "troops of the United States" within the meaning of the railroad land-grant Acts, as it held that the transportation of a furloughed soldier back to his proper station was

not transportation of "troops" within the meaning of those Acts.

This Court was also careful, in the *Union Pacific case, supra,* to reserve the question "whether a soldier traveling for the purposes of the Government, but not for any purpose connected with war or the preparation for war, falls within the provisions," referring in this connection to the opinion of the Attorney General reported in 19 Opin. A. G. 572.

In that opinion the Attorney General held that the transportation of an officer in the Engineer Corps of the Army, while traveling in the discharge of duties connected with river and harbor improvements to which he had been assigned, came within the provisions of the Michigan Central Railroad land-grant Act of June 3, 1856, (11 Stat. 21), as amended July 3, 1866, requiring the use of its highway in the transportation of "troops of the United States" free from toll or other charge. But an examination of that opinion shows that the Attorney General was laboring under a misapprehension as to the nature of such a condition in a land-grant act, as in support of his construction he refers to the following principle laid down by this Court in *Slidell v. Grandejean,* 111 U. S. 437:

> "It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State. As a reason for this rule it

> is often said that such acts are usually drawn by interested parties, and they are presumed to claim all they are entitled to."

The principle thus stated by this Court is applicable, in terms, only to "a grant of public property to an individual, or the relinquishment of a public interest." It has no application to a provision in a railroad land-grant Act by which a *privilege* is exacted of the grantee railroad for the benefit of the United States. Certainly, such a *privilege* is not to be enlarged by doubtful construction, especially where, as here, such enlargement would place an enormous and ever increasing burden upon the grantee.

This question has already been quite fully discussed herein (*supra*, p. 35).

The term "troops of the United States" connotes a body of soldiers, moving collectively, as this Court recognized in the *Union Pacific Case*. That term certainly does not cover, in its ordinary significance, *an individual officer or enlisted man of the Army traveling for purposes which have no relation to the movement of the troops to which he belongs, or which are non-military in their nature.* Notwithstanding the fact that the term "troops of the United States" connotes a *body* of soldiers, moving *collectively*, the land-grant railroads, and the other railroads equalizing therewith, have acquiesced in the application of the land-grant privilege to the transportation of individual officers and enlisted men of the Regular Army, Navy and Marine Corps for *military purposes;* but said railroads have consistently objected to the extension of that privilege to an individual officer or enlisted man traveling for *non-military* purposes.

We submit that the position of the railroads in this connection is well taken. It seems unbelievable that the transportation of an engineer officer of the War Department for the purpose of supervising the construction of engineering works of a civil and purely non-military nature and *so recognized by both the Congress and the War Department,* or for the purpose of attending the meetings of the California Debris Commission—also recognized as a purely civil matter—is to be regarded as transportation of one of the "troops of the United States" within the meaning of the railroad land-grant Acts.

X.

Escorts accompanying the remains of deceased soldiers, in time of peace, move as individuals, and not as Military forces. Therefore, they are not "troops of the United States" under the land-grant acts.

(Reference to Finding X.) (R. 71)

These escorts, it is agreed, were enlisted men of the Army detailed to accompany the remains of deceased soldiers. To justify the land-grant deductions made by the Government on account of such transportation it must be held that such transportation constituted a movement of the "troops of the United States" within the meaning of the railroad land-grant Acts. It is submitted that such transportation does not come within said provisions of the land-grant Acts. Said service is not to be classified as a movement of troops, as prior thereto the deceased had

answered their last roll call. Only their *remains* were being transported.

In this connection it may be interesting to note the following from Comptroller General McCarl's decision November 28, 1921, rendered to the Secretary of the Navy with regard to transportation of a *deceased* enlisted man of the Navy and a civilian attendant (1 Comp. Gen. 288):

> "The Supreme Court of a United States in decision of March 31, 1919, in the case of the *United States v. Union Pacific Railroad Company*, 249 U. S., 354, gave a more limited construction to the term troops of the United States as used in the land-grant acts. In accordance with the principles announced in said decision, the transportation of the bodies of deceased officers and enlisted men can not in any sense be considered troops of the United States, their service as such having been terminated by death. Neither can said remains be considered as property of the United States, for the property right therein vests in the next of kin. The casket and other articles used in the transportation and burial of the body, though furnished by the Government, ceased to be Government property as soon as issued in connection with the deceased, and thereafter can only be considered as subsidiary to the body, the property in which vests with the property in the body. It thus appears that this transportation can not be considered either as transportation of property or troops of the United States and is therefore not subject to the deductions authorized under the land-grant laws for the transportation of property and troops of the United States. The civilian attendant accompanying the remains, not being embraced within the term troops of the United States, the transportation thereof is not subject to deductions under said land-grant laws. Such

decisons of the Comptroller of the Treasury as may be in conflict herewith will not be followed hereafter."

Again we state that there is nothing in the words or purposes of the land-grant Acts to warrant the enlargement of the exactions thereof in the matter of transportation charges so as to include a person, whether a soldier or a civilian, accompanying the *remains* of a soldier, any more than to include in the term "troops and property of the United States" the remains itself, which the Comptroller General himself in said decision admits cannot be done.

It is noted, however, that two of the persons included in this Finding were *civilian attendants,* and that one of the fares charged was for the remains of a *deceased soldier;* and also that for these three fares judgment was awarded for $60.58. (R. 77) This leaves $137.54 still claimed under this Finding. See Analysis. (R. 8)

XI.

Enlisted men changing station, or returning to station, on transportation requests bearing indorsement: "Commanding officer notified of amount to be charged against soldier," are presumed to be traveling for their own purposes, and, therefore, are not "troops of the United States," within the meaning of the land-grant acts.

(Reference to Finding XI.) (R. 71.)

The Transportation Requests covering this transportation were endorsed "changing station" or "re-

turning to station", and on the face of each request was stamped the following endorsement: "*Commanding officer notified of amount to be charged against soldier.*" Plaintiff's efforts to ascertain from the War Department and the General Accounting Office whether any such charges were made or collected were futile.

It is submitted that the carrier had the right to rely on the transportation requests, which bore a notation by the issuing officer of the War Department that the cost of such transportation was to be charged against the soldier. The implication from this notation on the transportation requests is that the transportation requested was not military in its nature, but was a matter personal to the soldier, the expense of which should be borne by him.

It is also submitted that the burden of justifying these land-grant deductions rests upon the Government and not upon the carrier, and that the mere fact that the person transported is an enlisted man of the Army does not of itself justify the Government in making the land-grant deduction (as held by this Court in the *Union Pacific case* in respect to a soldier returning to his military station from furlough), but that it is incumbent upon the Government to show that the person transported comes within the term "troops of the United States" as used in the railroad land-grant Acts. In other words, the affirmative of the issue lies with the Government and not the plaintiff, especially in view of the fact that, according to the endorsement placed by the War Department on these transportation requests, the transportation was NON-MILITARY and *individual* in character.

XII.

An officer of the Medical Reserve Corps, traveling to and from camps of instruction and training, is not one of the "troops of the United States," within the meaning of the land-grant acts, because he is not a soldier when in active service for the mere purpose of instruction and training.

(Reference to Finding XII.) (R. 71-72.)

The several items claimed in the Court below, and which are covered by Finding XII have either been included in judgment awarded below, or claim waived by Plaintiff in proceedings below, *except* one item of $21.16 (shown in Analysis), (R. 9), same being for the transportation on Request No. 3032350 of a Medical Reserve Corps Officer of the Army prior to relief from active duty.

The "active duty" referred to in connection with the transportation of this officer of the Medical Reserve Corps was merely the 15 days training provided for the Officers' Reserve Corps in Section 32 of the Act of June 4, 1920, c. 227, 41 Stat. 776, of which the "Medical Department Reserve" is a part. (See Army Regulations No. 140-5, January 16, 1928, relating to the Officers' Reserve Corps, Sec. I, par. 5, sub-paragraph 14.)

For the reasons stated herein (R. ....) with reference to members of the Officers' Reserve Corps traveling to and from camps of instruction and training, the transportation of the officer of the Medical Reserve Corps covered by transportation request No. 3032350 was not transportation of "troops of the United States" within the meaning of the railroad land-grant Acts.

XIII.

No reference is made herein to Finding XIII (R. 72) covering transportation of "STRANDED ENLISTED MEN", because the small amount claimed therein, $46.42, was included in the judgment amount awarded by the Court below.

XIV.

Additional "percentage deductions" under joint military arrangement.

Not much has been said herein concerning the so-called "percentage deductions" under joint military arrangements. These are of minor importance, and may well be discussed on the merits in the event that this Honorable Court may see fit to grant this Petition for Writ of Certiorari. It might be stated, however, that these "percentage deductions" were applicable only to officers and enlisted men of the *Regular* Army, Navy and Marine Corps, and certain other persons specifically enumerated therein and connected with the movement of said organizations in the field.

CONCLUSION.

In conclusion, we wish to emphasize the fact that, under the decisions of the Court of Claims in the *Alabama Great Southern Case* and of this Court in the *Union Pacific Case,* to constitute the transportation of the members of any military organization that of 'troops of the United States" within the meaning of the railroad land-grant Acts, they must be—

(a) Officers or enlisted men of the Regular Army, Navy or Marine Corps.

(b) In active *military* service.

(c) Subject to the Articles of War of the Army or the Regulations for the Government of the Navy.

(d) Engaged in the performance of a military service, and not being transported for their own convenience (although the United States benefit thereby) such as the transportation of soldiers on furlough or stranded soldiers back to their proper station.

It also appears, from the opinion of this Court in the *Union Pacific Case*—

(1) That the term "troops of the United States," as used in the railroad land-grant Acts, is to be construed in the light of its meaning at the time of the passage of those Acts, and that, so construed, said term includes only the Regular Army, Navy or Marine Corps, *i. e.*, persons whose sole vocation is that of war, or training for war.

(2) That the term "troops of the United States," as used in the railroad land-grant Acts, implies "a body of soldiers, moving collectively;" hence it is not permissible to extend it, by construction, to the movement of an individual soldier, such as a military prisoner being transported to a place designated for his confinement, when such movement is not a part of or in connection with the movement of a body of troops to which he belongs.

(3) The term "troops of the United States," as used in the railroad land-grant Acts, has no application to those who are only "potentially" such troops, such as members of the National Guard or members of the Officers' Reserve Corps.

The language of the transportation *provision in the* Naval Appropriation Acts is also significant as showing that special provision was required to be made for "transportation of enlisted men of the Naval Reserve Force to and from duty," etc., and that their transportation was not included in the term "transportation of enlisted men and apprentice seamen." We particularly would refer to the following provision from Naval Appropriation Act July 1, 1922 (c. 259, 42 Stat. 786, 790) (italics ours):

TRANSPORTATION AND RECRUITING.

For travel allowance of enlisted men discharged on account of expiration of enlistment; transportation of *enlisted men and apprentice seamen* and applicants for enlistment at home and abroad, with subsistence and transfers en route, or cash in lieu thereof; transportation to their homes, if residents of the United States, of enlisted men and apprentice seamen discharged on medical survey, with subsistence and transfers en route, or cash in lieu thereof; transportation of sick or insane enlisted men and apprentice seamen to hospitals, with subsistence and transfers en route, or cash in lieu thereof; transportation of enlisted men of the *Naval Reserve Force* to and from duty, with subsistence and transfers en route, or cash in lieu thereof; apprehension and delivery of *deserters* and *stragglers*, and for railway guides and other expenses incident to transportation; expenses of recruiting for the naval service; rent of rendezvous and expenses of maintaining the same; advertising for and obtaining men and apprentice seamen; actual and necessary expenses in lieu of mileage to officers on duty with traveling recruiting parties; transportation of dependents of enlisted men; * * *.

None of the deduction amounts claimed herein were agreed to, or acquiesced in by your petitioner, but the same were made against its protest.

It will be seen from the provisions in the Army Appropriation Acts under "Transportation of the Army and its Supplies," that the Congress did not understand, in enacting the Army transportation provisions, that the term "troops" would embrace "members of the Officers' Reserve Corps," "Enlisted men of the Enlisted Reserve Corps," etc., for which reason specific provision was added therein so as to include such classes apart from those persons designated as "troops."

We respectfully ask that, for the reasons set forth in our Petition in this case, and for other reasons found herein or that may appear to this Honorable Court, the Writ of Certiorari prayed for may be issued.

Respectfully submitted,

CHARLES H. BATES,
Counsel for Southern Pacific Company,
Petitioner.

November 2, 1931.